

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3766 of 1996

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For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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BHUPATBHAI KARASANBHAI KHANT

Versus

DISTRICT MAGISTRATE

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Appearance:

MS DR KACHHAVAH for Petitioner

Mr.L.R. Pujari, learned A.G.P. for the respondents.

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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 09/10/96

ORAL JUDGMENT ;

1. This Special Civil Application is directed against the order dated 17-4-96 passed by the District Magistrate, Amreli detaining the petitioner under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 18-4-96 and since then the petitioner is under detention lodged in Jamnagar District Jail, Jamnagar.

2. The present Special Civil Application was filed on 20-5-96 and on 21-5-96 Rule returnable for 8-7-96 was issued. So far neither any reply has been filed on behalf of the respondents nor any affidavit-in-reply has been filed by the detaining authority.

3. The grounds of detention enclosed with the detention order show that 4 criminal cases under the Bombay Prohibition Act were registered against the petitioner at Police Station, Kodinar. Out of these 4 cases, 2 cases are pending trial and in 2 cases the investigation was pending with the Police at the time when the present detention order was passed. The detaining authority has taken note of the allegations in the aforesaid 4 criminal cases and has recorded that in the area nearby village Patvad the petitioner was engaged in the unlawful and unauthorised manufacture and sale of the country liquor and had become a problem for the maintenance of the public order. Besides these, reference has been made to the statements made by 6 witnesses with regard to the incident dated 14-2-96. One of the witnesses has stated that the petitioner was manufacturing and selling country liquor injurious to the public health, about 4 months back certain guests had come to the house of this witness and at that time the petitioner was selling the country liquor near a School. The guests had also taken liquor from the petitioner. The liquor was spurious and had a bad effect on the eyes of the witness and when the witness complained to the petitioner, the petitioner abused the witness and threatened him not to tell to anybody. Second witness has stated that the petitioner was selling the liquor in village Patvad and it had become difficult for the members of the public to pass through this area. About 20 days back the petitioner had taken about 10 tins of the country liquor manufactured by him in the rickshaw of the witness and threatened the witness that in case he informed the police, he would finish the witness. The charges of the rickshaw has also not been paid. Similar allegations have been made by the 3rd witness, who has stated that the petitioner was doing the business of country liquor with Dadagiri. The 4th witness has made similar allegations and stated that the petitioner was selling the country liquor manufactured by him near a temple and had also beaten the witness and abused him. Consumers of the liquor came to beat the witness and the witness had to run away. Similar statements have been made by two other witnesses. All these statements were made on 14-2-96 to the Police Sub Inspector, L.C.B. Amreli. The detaining authority has noted that all these

witnesses had stated that they were frightened and afraid of the petitioner and had requested that their identity be kept secret. The petitioner was a bootlegger and that the proceedings under the Bombay Police Act would not serve the purpose and that the petitioner had given a bond of good conduct for Rs.2000/- as per the order of the Sub Divisional Magistrate, Rajula, but there was no improvement and for maintenance of public order it was necessary to detain the petitioner and accordingly the detention order was passed against the petitioner.

4. Learned counsel for the petitioner has challenged the detention order on various grounds including the ground that the allegations as have been levelled against the petitioner even if taken to be correct on their face value do not constitute the case of breach of public order so as to warrant the detention and at the most it may constitute a case of breach of law and order.

5. Learned A.G.P. has supported the detention order orally.

6. I have considered the submissions made on behalf of both the sides. I need not deal with all the grounds on which the detention order is challenged because I find that the allegations, as have been levelled, do not constitute a case of breach of public order. I have already considered similar allegations in Special Civil Application No.3879 of 1996 decided on 4-10-96 and after considering the ratio of the judicial pronouncement by the Supreme Court and this Court, it has been found that the allegations, such as levelled in the present case, do not constitute the case of breach of public order and at the most it constitute a case of breach of law and order. The reasoning on which the Special Civil Application No.3879 of 1996 has been allowed apply with full force to the facts of the present case. It is, therefore, held that the detention order, as passed in this case, was not at all warranted.

7. Accordingly this Special Civil Application is allowed. The impugned detention order dated 17-4-96 passed by the District Magistrate, Amreli is hereby quashed and set aside and the petitioner's continued detention is declared to be illegal and the respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule is made absolute.